

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

STATE OF MISSISSIPPI, *et al.*,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity
as Secretary of Health and Human Services,
et al.,

Defendants.

Civil Action No. 1:22-cv-00113-HSO-RPM

DECLARATION OF SUSAN HILL

Pursuant to 28 U.S.C. § 1746, I, Susan Hill, based upon my personal knowledge, declare the following:

1. I am the Acting Group Director of the Policy and Program Alignment Group at the Office of Minority Health (OMH), Centers for Medicare & Medicaid Services (CMS), United States Department of Health and Human Services. I have been acting in this capacity since August 24, 2023. Prior to that time, I served as a Senior Advisor to the Office Director, OMH.
2. As Acting Group Director of the Policy and Program Alignment Group, I am responsible for overseeing and managing the CMS Disparities Impact Statement, including updates to the Disparities Impact Statement.
3. The Disparities Impact Statement is used broadly to assist all health care stakeholders in achieving optimal health outcomes for all populations, including populations experiencing health disparities. As explained in the bulletin accompanying the most recent update, the CMS Disparities Impact Statement “is a tool that can be used by health care stakeholders to

promote efforts to eliminate health disparities while improving the health of people from all populations that experience disparities, including people from racial and ethnic minorities; people with disabilities; members of the lesbian, gay, bisexual, and transgender communities; sexual and gender minorities, individuals with limited English proficiency; and rural, tribal, and geographically isolated communities.” *See* Ex. A; *also available at:* <https://www.cms.gov/files/document/cms-disparities-impact-statement.pdf>.

4. The Disparities Impact Statement was first released in 2016 and was originally titled the “Disparities Action Statement.” This resource predates the creation of the clinical practice improvement activity MIPS IA_AHE_8. The Disparities Impact Statement was and is used by clinicians and other health care stakeholders outside the context of the clinical practice improvement activity MIPS IA_AHE_8.
5. On August 20, 2024, CMS released an updated Disparities Impact Statement. *See* Ex. B; *also available at:* <https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/Disparities-Impact-Statement-508-rev102018.pdf>. Prior to that update, the Disparities Impact Statement had last been updated as follows:

Disparities Action Statement, first released, Fall 2016

Disparities Impact Statement, retitled and revised, October 2018

Disparities Impact Statement, updated and revised, April 2021

6. CMS explained in the bulletin accompanying the August 20, 2024 update that this update was completed as part of CMS’s regular cycle of review of available resources in order to provide the most up-to-date information available. The update is intended to be clearer about the purpose of the resource and offer more examples of potential use. *See* Ex. A.

7. While CMS did not understand or intend the prior Disparities Impact Statement to encourage discrimination of any kind, the update addresses any misreading of the prior Disparities Impact Statement to make clear that any interventions taken pursuant to that Statement must be “available to all individuals without regard to a person’s race, color, national origin, sex, age, or disability.” *See* Ex. A; Ex. B at 2. To eliminate any possible ambiguity, the updated Disparities Impact Statement also makes clear that it is to be used “to promote efforts to identify and address health disparities while improving the health of all people, including those from racial and ethnic minorities; people with disabilities; members of lesbian, gay, bisexual, and transgender communities; individuals with limited English proficiency; and rural, Tribal, and geographically isolated communities.” Ex. B at 1.
8. To further clarify the types of interventions contemplated by the Disparities Impact Statement, the update provides an example of a plan (“Reduce unnecessary emergency department visits among patients who screen positive for health-related social need.”) and a short-term goal and a long-term goal to accomplish that plan. *See* Ex. B.
9. As the updated Disparities Impact Statement makes clear, CMS has no intention of instructing clinicians to deny resources or interventions to patients based on a person’s race, color, national origin, sex, age, or disability, or to otherwise engage in unlawful discrimination. Indeed, federal anti-discrimination law prohibits clinicians in federally funded or CMS-administered programs from subjecting any individual to unlawful discrimination. Such discrimination would be prohibited by 42 U.S.C. § 18116(a), which provides that “[A]n individual shall not . . . be subjected to discrimination under[] any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or

contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under this title.”

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed this 31st day of October 2024, in Ellicott City, MD.

SUSAN N. HILL -S Digitally signed by SUSAN N. HILL -S
Date: 2024.10.31 09:23:58 -04'00'

Susan Hill
Acting Group Director
Policy and Program Alignment Group
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